

Before the
Federal Communications Commission
 Washington, D.C. 20554

RECEIVED

JUL 16 1999

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)
)
 Implementation of the Local Competition)
 Provisions of the Telecommunications Act of)
 1996)
)
 Petitions of the California Public Utilities)
 Commission and the People of the State of)
 California for an Additional Delegation of)
 Authority to Conduct NXX Code Rationing)
)
 Petition of the New York Department of Public)
 Service Petition for Additional Authority to)
 Implement Number Conservation Measures)

CC Docket No. 96-98

NSD File No. L-98-136

NSD File No. L-99-21

To: Chief, Common Carrier Bureau

COMMENTS OF DOBSON COMMUNICATIONS CORPORATION

Dobson Communications Corporation ("Dobson"), on behalf of its affiliates operating cellular systems in California and New York,¹ hereby comments in response to the Common Carrier Bureau's ("Bureau") Public Notice of June 22, 1999 seeking public comment on several state commission petitions which seek varying degrees of numbering administration authority.² The record in these proceedings demonstrates that the above-captioned petitions submitted by the California Public Utilities Commission ("CPUC") and New York Department of Public Service

¹ These affiliates are: Dobson Cellular of California, Inc., Dobson Cellular of Imperial, Inc., Santa Cruz Cellular Telephone, Inc., and Sygnet Communications, Inc.

² Public Notice, *Common Carrier Bureau Seeks Comment on State Utility Commission Requests for Additional Authority to Implement Telecommunications Numbering Conservation Measures*, DA 99-1198 (rel. June 22, 1999).

No. of Copies rec'd 0+4
 List A B C D E

(“NYDPS”) should be denied. Specifically, these parties have failed to demonstrate that a waiver of the Commission’s numbering administration rules, and the resulting breakdown of the nationwide, centralized numbering administration regime developed by Congress and the Commission, will serve the public interest. Accordingly, the Commission should deny the petitions.

DISCUSSION

I. The Record in this Proceeding Supports a Nationwide Approach to Number Conservation and Denial of the Petitions

The CPUC and NYDPS both seek authority to implement a variety of number conservation measures, including: thousand block and ITN number pooling; fill rates; NXX code reclamation; and various enforcement mechanisms. The very issues addressed in the CPUC and NYDPS petitions are the subject of the pending numbering resource optimization (“NRO”) rulemaking proceeding.³ To the extent the Commission addresses these petitions in advance of the *NRO Notice* proceeding, the public interest will be served only by rejecting them.

In the Public Notice, the Commission asserts that “[b]ecause the state utility commissions which have petitioned us face immediate concerns regarding the administration of telecommunication numbering resources in their states, we find it to be in the public interest to address these petitions as expeditiously as possible, prior to completing the rulemaking proceeding.”⁴ The Commission should take heed, however, of its previous acknowledgment that “it is nevertheless the case that guidance from the courts indicates that issues of general

³ See *Numbering Resource Optimization, Notice of Proposed Rulemaking*, CC Docket No. 99-200, FCC 99-122 (rel. June 2, 1999), 64 Fed. Reg. 32471 (June 17, 1999) (“*NRO Notice*”).

⁴ Public Notice at 2.

applicability are more suited to rulemaking than to adjudication.”⁵ Dobson agrees with the numerous parties commenting in opposition to these petitions that the nationwide, comprehensive approach to advancing the more efficient use of the numbering resource currently under consideration in the *NRO Notice* will far better serve the public interest than the state-by-state approach and decision-making advocated by petitioners.⁶

The CPUC asserts that “[w]aiting for the FCC to resolve the myriad issues in the [*NRO Notice*] poses no detriment to the industry” but “will mean untold additional costs to the California public”⁷ The CPUC fails to acknowledge, however, the critical importance of a competitively neutral, third-party administered numbering administration regime to telecommunications competition (and, thus, to consumers), and the costs to carriers if Congressionally- and Commission-established nationwide administration of the numbering resource is undermined. As the Commission stated in the *Pennsylvania PUC Order*:

⁵ *Rulemaking To Amend Parts 1, 2, 21, And 25 Of The Commission's Rules To Redesignate The 27.5-29.5 GHz Frequency Band, To Reallocate The 29.5-30.0 GHz Frequency Band, To Establish Rules And Policies For Local Multipoint Distribution Service And For Fixed Satellite Services, Second Report and Order*, 12 FCC Rcd. 12545, ¶ 388 (1997) (citing *National Small Shipment Traffic Conf. v. ICC*, 725 F.2d 1442, 1447-48 (D.C. Cir. 1984)), *aff'd*, *Melcher v. FCC*, 134 F.3d 1143, 1163-64 (D.C. Cir. 1998); *see also Turro v. FCC*, 859 F.2d 1498, 1500 (D.C. Cir. 1988) (upholding Commission determination it was preferable to address policy concerns raised by waiver applicant “in a rulemaking proceeding and not in the context of an ad hoc waiver proceeding,” and noted that waiver applicant’s arguments were “virtually identical to those put forward by others in petitions to the FCC”).

⁶ *See, e.g., Allied Personal Communications Industry Ass’n of California (“APCIAC”) Comments in CC Docket No. 96-98*, filed June 15, 1999, at 7-10; *AirTouch Comments in CC Docket No. 96-98*, filed June 14, 1999, at 5-6; *AT&T Comments in CC Docket No. 96-98*, filed June 14, 1999, at 4-5; *SBC Comments in CC Docket No. 96-98*, filed June 14, 1999, at 2-4; *see also AT&T Comments in CC Docket No. 96-98*, filed Apr. 5, 1999, at 4-7; *PCIA Comments in CC Docket No. 96-98*, filed Apr. 5, 1999, at 4-7 *Sprint Corp. Comments in CC Docket No. 96-98*, filed Apr. 5, 1999, at 13-14.

⁷ *See CPUC Reply Comments at 2.*

[A] nationwide, uniform system of numbering is essential to the efficient delivery of telecommunications services in the United States. The Commission, the state commissions, and the industry should work together to bring about as quickly as possible national methods to conserve and promote efficient use of numbers that do not undermine that uniform system of numbering. Such attempts, however cannot be made on a piecemeal basis without jeopardizing telecommunications services throughout the country. *Substantial social and economic costs would result if the uniformity of the North American Numbering Plan were compromised by states imposing varying and inconsistent regimes for number conservation and area code relief.*⁸

Moreover, while acknowledging the costs and inconveniences to consumers of implementing area code relief, the Commission noted in the *NRO Notice* that:

Competition in telecommunications markets is dependent, in part, upon fair and impartial access by all telecommunications carriers to national numbering resources. Inefficiencies in the allocation and utilization of numbering resources threaten to slow or halt the growth of competition by preventing new entrants from getting into telecommunications markets, and by preventing carriers already providing services from expanding their offerings.⁹

It was precisely for this reason -- fair and impartial access by *all* carriers to *national* numbering resources -- that the NANC and NANPA were established. State-by-state number conservation regimes, and discriminatory measures such as wireless-specific overlays, should therefore be rejected.

II. State Commissions Should Exercise Existing Authority to Facilitate Area Code Relief and Numbering Resource Optimization

The Commission's rules *already* authorize state commissions to introduce new area codes by either a geographic area code split, an area code boundary realignment, or an area code

⁸ *Pennsylvania PUC Order*, 13 FCC Rcd. 19009, ¶ 21 (emphasis added).

⁹ *NRO Notice* ¶¶ 13-14.

overlay.¹⁰ The Commission has also expressly authorized states to engage in limited number pooling trials.¹¹ Indeed, New York *already* has initiated a number pooling trial similar to that used in Illinois.¹² As a number of parties have noted, however, many of the problems that regulators and carriers in both California and New York are currently facing have been exacerbated by the respective state commission own inactions. The relief requested in the state commission petitions is therefore particularly inappropriate.

Only in the last year, for example, has the CPUC (as one commenter stated) “bit the bullet” and begun to seriously consider area code overlays.¹³ Even today, the CPUC’s implementation of overlays has run into obstacles, as is evident from its recent experience with the 424 area code overlay.¹⁴ Moreover, in New York, the NYDPS experience with the 516 area code further underscores the need for expeditious area code relief action by state commissions

¹⁰ See 47 C.F.R. § 52.19(c).

¹¹ See *Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717*, NSD File No. L-97-42, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Memorandum Opinion and Order and Order on Reconsideration*, 13 FCC Rcd. 19009, 19027-28 ¶¶ 27-28 (1998).

¹² See NYDPS Petition at 6-7. While the CPUC now states that it “would happily agree to copy either the New York or Illinois model” for number pooling. See CPUC Reply Comments at 4. Dobson notes that neither of these involve wireless carriers and the Commission has *already* set forth guidelines for implementing such number pooling trials. Thus, it is unnecessary for the Commission to act on these requests.

¹³ See APCIAC Comments at 4; Sprint PCS Comments in CC Docket No. 96-98, filed Feb. 5, 1999, at 2-3.

¹⁴ See CPUC News Release, *CPUC Temporarily Suspends 424 Area Code Overlay*, June 24, 1999 (temporarily suspending implementation of overlay while CPUC reviews concerns raised in petition submitted by state legislator).

pursuant to the Commission's current rules.¹⁵ As Sprint Corp. noted in its comments, the NYDPS has not taken prompt action to adopt a relief plan, even though the code was placed in extraordinary jeopardy over 18 months ago.¹⁶

The large number of rate centers, particularly in California, has exacerbated the situation even further; a CLEC desiring to serve every rate center in California needs 10,000 numbers for each of 800 rate centers -- for 8,000,000 total.¹⁷ Moreover, the number of rate centers in California is growing, instead of shrinking, leading to ever more inefficient number usage. The inefficiency of number usage in California is compounded by the proliferation of rate centers: the CPUC admits that fewer than 20% of the total numbers in the states 800 rate centers are in use.¹⁸ While the CPUC does not (and cannot) dispute that rate center consolidation will result in more efficient use of NXX codes, it objects that carriers exaggerate the expediency with which rate center consolidation can be implemented.¹⁹ Rate center consolidation *is* feasible, however, and has been implemented in some states already.²⁰ Thus, while carriers do not dispute that rate center consolidation entails potentially thorny issues involving rate-rebalancing and 911 call

¹⁵ See Sprint Corp. Comments at 7-8.

¹⁶ See *id.*

¹⁷ See APCIAC Comments at 4; AirTouch Comments at 4-5. The benefits of rate center consolidation have been addressed in response to the NYDPS petition as well. See Sprint Corp. Comments at 4; AT&T Corp. Comments at 21-22.

¹⁸ See CPUC petition at 13.

¹⁹ See CPUC Reply Comments at 5-8.

²⁰ Indeed, another of the petitioners, the Florida PSC, views rate center consolidation favorably.

routing, the existence of these issues is not a basis for inaction on the CPUC's part nor can it serve as a basis for the relief sought by the state commissions.

III. Wireless Carriers Are Efficient Users of NXX Codes

Neither the CPUC nor the NYDPS explicitly address the implications of their proposed number conservation efforts for wireless carriers, although both would clearly affect wireless carriers' access to the numbering resource. The record demonstrates that wireless carriers are, in fact, efficient users of the numbering resource. Because a wireless carrier's NXX codes are not tied to a single rate center, they are able to utilize NXX codes at high fill levels.²¹ The CPUC's arguments that wireless carriers are inefficient users of NXX codes, and thus should be subject to state-imposed number conservation requirements and service-specific overlays, are thus misplaced.²²

For these reasons also, the Commission should reject the CPUC request for authority to implement a wireless-only overlay.²³ Given the highly inefficient means of allocating NXX codes to CLECs, it is questionable whether a wireless-only overlay would provide meaningful

²¹ See AirTouch Comments at 3-4 (California); Sprint PCS Comments at 7-8 (California).

²² Numerous parties have also noted that CMRS providers are not subject to number portability requirements until November 24, 2002. See *Cellular Telecommunications Industry Association's Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations*, WT Docket No. 98-229, *Telephone Number Portability*, CC Docket No. 95-116, *Memorandum Opinion and Order*, FCC 99-19 (rel. Feb. 9, 1999). State commissions are thus precluded from imposing LNP-based number conservation methods, such as thousand-block pooling or ITN porting, on CMRS providers. See AirTouch Comments at 9; Sprint PCS Comments.

²³ NSD File No. L-99-36.

relief in California.²⁴ Moreover, the record demonstrates that the Commission's original competitiveness concerns for prohibiting wireless specific overlays remain valid.²⁵ The Commission noted just one year ago that in addition to competitive inequalities between ILECs and CLECs, it "also must consider the effects of dialing disparities on future competitors, including wireless carriers, which might seek to enter the market to compete for customers" in a geographic market.²⁶ The CPUC provides no basis for overturning this established policy.

²⁴ See Sprint PCS Comments at 4; AirTouch Comments at 18 (an all-services overlay adds as many new numbers as a service-specific overlay); APCIAC at 6; see also AT&T Comments at 3-4. Dobson also questions whether state commissions will necessarily be able to implement their numbering administration plans in a timely manner. State commissions themselves generally have state-imposed administrative procedures with which they must comply and, indeed, the delays in complying with such procedures were a basis for the CPUC's request for interim NXX code rationing authority. See Letter to Helen M. Mickiewicz, California Public Utilities Commission, from Yog Varma, Deputy Chief, Common Carrier Bureau, DA 98-2463, 13 FCC Rcd. 23737 (Com. Car. Bur. 1998).

²⁵ *Local Competition Second Report and Order*, 11 FCC Rcd. 19392, 19513 ¶ 285 (1996) (concluding that "any overlay that would segregate only particular types of telecommunications services or particular types of telecommunications technologies in discrete area codes would be unreasonably discriminatory and would unduly inhibit competition"); see AirTouch Comments at 19; APCIAC Comments at 4-6.

²⁶ New York Department of Public Service Petition for Expedited Waiver of 47 C.F.R. Section 52.19(c)(3)(ii), *Order*, NSD File No. L-98-03, DA 98-1434, ¶ 13 (rel. July 20, 1998).

CONCLUSION

For these reasons, the Commission should deny the CPUC and NYDPS petitions and instead resolve the issues raised therein in the context of the pending *NRO Notice*. State commissions' related petitions for authority to implement wireless-only overlays should be rejected as well.

Respectfully submitted,

DOBSON COMMUNICATIONS CORPORATION

By: 

Lawrence J. Movshin
Robert G. Morse
WILKINSON BARKER KNAUER, LLP
2300 N Street, NW
Suite 700
Washington, DC 20037-1128
(202) 783-4141

Its Attorneys

July 16, 1999

CERTIFICATE OF SERVICE

I, Henry Morris, Jr., hereby certify that on this 16th day of July 1999, a copy of the foregoing "Comments Of Dobson Communications Corporation" was served by U.S. Mail, first-class postage prepaid to the following:

Lawrence G. Malone
General Counsel
Public Service Commission
of the State of New York
Three Empire State Plaza
Albany, New York 12223-1350

Lawrence E. Strickling*
Chief, Common Carrier Bureau
Federal Communications Commission
Portals II
445 12th Street, S.W., 5th Floor
Washington, DC 20554

Al McCloud*
Network Services Division
Portals II
445 12th Street, S.W.
Suite 6A-320
Washington, DC 20554

Anna Gomez*
Common Carrier Bureau
Federal Communications Commission
Portals II
445 12th Street, S.W., 5th Floor
Washington, DC 20554

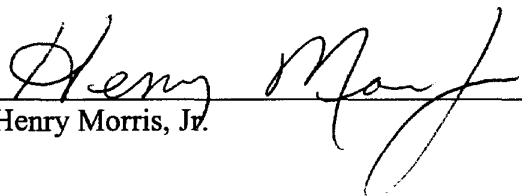
Jeannie Grimes*
Common Carrier Bureau
Federal Communications Commission
Portals II
445 12th Street, S.W., 5th Floor
Washington, DC 20554

Kris Montieth*
Federal Communications Commission
Portals II
445 12th Street, S.W., 5th Floor
Washington, DC 20554

Yog Varma*
Federal Communications Commission
Portals II
445 12th Street, S.W., 5th Floor
Washington, DC 20554

Blaise Scinto*
Federal Communications Commission
Portals II
445 12th Street, S.W., 5th Floor
Washington, DC 20554

Peter Arth, Jr.
Lionel B. Wilson
Helen M. Mickiewicz
Public Utilities commission
State of California
505 Van Ness Avenue
San Francisco, CA 94102


Henry Morris, Jr.

*By Hand